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24 **UNITED STATES DISTRICT COURT**

25 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

26 NEUROGRAFIX, a California
27 corporation; WASHINGTON
28 RESEARCH FOUNDATION, a not-for-profit Washington corporation,

Plaintiffs,

vs.

29 SIEMENS MEDICAL SOLUTIONS
30 USA, INC., a Delaware corporation; and
31 SIEMENS AKTIENGESELLSCHAFT, a
32 German Corporation,

Defendants.

Case No. 10-CV-1990 MRP (RZx)
[Assigned to The Honorable Mariana
R. Pfaelzer]

DECLARATION OF ANDREW D. WEISS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF INDEFINITENESS OF "CONSPICUITY" IN CLAIMS 1, 3, 7, 11, 12, 18, AND THEIR ASSERTED DEPENDENT CLAIMS IN U.S. PATENT NO. 5,560,360

First Amended Complaint Filed:
July 30, 2010

1 I, Andrew D. Weiss, declare and state as follows:

2 1. I am a member of the State Bar of California and an associate at the
3 firm of Russ, August & Kabat, counsel of record for Plaintiff NeuroGrafix in the
4 above-captioned action. I have personal knowledge of the facts set forth herein,
5 and if called upon to testify, could and would testify competently thereto.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of the slip
7 opinion in *Star Science Inc. v. R.J. Reynolds Tobacco Co.*, No. 2010-1183, 2011
8 U.S. App. LEXIS 17826 (Fed. Cir. Aug. 26, 2011).

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of the Expert
10 Report of Michael Brant-Zawadzki, M.D., F.A.C.R., regarding the meaning of
11 "conspicuity" to a person of ordinary skill in the art, dated July 21, 2011.

12 4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts
13 from the deposition transcript of R. Nick Bryan, conducted on September 7, 2011.

14 5. Attached hereto as **Exhibit 4** is a true and correct copy of U.S.
15 Patent No. 5,560,360, entitled "Image Neurography and Diffusion Anisotropy
16 Imaging."

17 6. Attached hereto as **Exhibit 5** is a true and correct copy of the Expert
18 Report of R. Nick Bryan, dated July 22, 2011

19 7. Attached hereto as **Exhibit 6** is a true and correct copy of Hallberg et
20 al., *Some Effects of Method on the Measured Conspicuity of Chest Lesion*, 13
21 Investigative Radiology 339-443 (1978).

22 8. Attached hereto as **Exhibit 7** is a true and correct copy of the
23 Rebuttal Expert Report of Aaron G. Filler, M.D., Ph.D., F.R.C.S., to the Expert
24 Report of Michael E. Moseley concerning U.S. Patent No. 5,560,360, dated
25 February 1, 2011.

26 9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts
27 from the deposition transcript of Michael E. Moseley, conducted on February 8,
28 2011.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the Rebuttal Expert Report of Michael Brant-Zawadzki, M.D., F.A.C.R. to the Expert Report of R. Nick Bryan, dated August 8, 2011.

11. Attached hereto as **Exhibit 10** is a true and correct copy of Vokurka, et al., *Improved High Resolution MR Imaging for Surface Coils Using Automated Intensity Non-Uniformity Correction: Feasibility Study in the Orbit*, 14 J. Magnetic Resonance Imaging 540-546 (2001).

12. Attached hereto as **Exhibit 11** is a true and correct copy of the March 21, 2005 Claim Construction Order in *Sharper Image Corp. v. Honeywell International, Inc.*, Case No. C02-4860 CW (N.D. Cal.), Docket No. 312.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the Amendment and Request for Reconsideration, dated November 14, 1994, submitted during the prosecution of U.S. Patent No. 5,560,360.

14. Attached hereto as **Exhibit 13** is a true and correct copy of the Amendment, dated July 6, 1995, submitted during the prosecution of U.S. Patent No. 5,560,360.

15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the deposition transcript of Michael Brand-Zawadzki, M.D., F.A.C.R., taken on August 16, 2011.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 12th day of September, 2011 at Los Angeles, California.

By: /s/ Andrew D. Weiss
Andrew D. Weiss

RUSS, AUGUST & KABAT

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